Dato' Ting Check Sii v Datuk Haji Mohamad Tufail bin Mahmud & Ors

HIGH COURT (KUCHING) — ORIGINATING PETITION NO 26–05 OF 2006–II
HAMID SULTAN JC
26 JULY 2007

Companies and Corporations — Directors — Removal — Whether there could be a legitimate expectation to be a director — Whether there was personal relationship based on mutual confidence

Companies and Corporations — Members rights — Oppression — Relief — Petition for relief — Legal test of what amounts to oppression — Company making profit — Whether there could be oppression of minority shareholders

Companies and Corporations — Oppression — Oppression of minority — Whether company a quasi-partnership — Whether there could be a legitimate expectation to be a director — Legal test of what amounts to oppression

The petitioner, as a minority shareholder, claimed that he had been oppressed by the acts of the first to eighth respondents and had filed a petition under s 181 of the Companies Act 1965 for various orders, inter alia: (i) that he was entitled to be a director of the ninth respondent as long as the petitioner held shares in the ninth respondent; (ii) an order that the first to seventh and ninth respondents reinstated him as managing director of the ninth respondent; (iii) an injunction that the first respondent be restrained from acting as managing director of the ninth respondent. The petitioner in the petition, inter alia, stated that the petitioner and the first respondent were founding subscriber and director of the ninth respondent and the object and purpose for the incorporation of the ninth respondent was to undertake a joint venture business with the Malaysian Group and the Japanese Group. The joint venture companies consisted of other shareholders and directors holding different equities, and the companies were commonly referred to as 'the Sanyan Group of Companies'. The petitioner alleged that he was the one who was responsible for initiating the investment and took charge of the business operation and until 2003, the first respondent was not involved in the active management of the ninth respondent and other companies in the Sanyan Group. The petitioner alleged that the joint venture was a quasi-partnership between the Japanese shareholders and the local shareholders, comprising of the petitioner and the fist respondent. The relationship between the petitioner and the first respondent deteriorated. After early 2003, the first respondent refused to meet with the petitioner and started to take control of the Group and either ignore or override the petitioner's instruction. In opposing the petition, both the Malaysian and Japanese Group, inter alia,

submitted that: (a) the ninth respondent company was not a quasi-partnership; (b) there were no legitimate expectations or understanding between the petitioners with any of the parties to support the allegation that the petitioner was to always be the managing director of the ninth respondent company; (c) the petitioner had failed to prove that the affairs of the ninth respondent company had been concluded in a manner which was oppressive; (d) the petitioner had filed the petition with ulterior motives and collateral purposes.

Held, dismissing petition with cocts:

(1) A member of the company would be able to bring himself within s 181 of the Act if he could show that the value of his shareholding in the company had been seriously diminished or at least seriously jeopardised by reason of a course of conduct on the part of those persons who had de facto control of the company, which had been unfair to the member concern. The test is objective, ie, whether a reasonable bystander observing the consequences of their conduct, would regard it as having unfairly prejudiced the petitioner's interests. The change in the appointment of managing director or directors of the company done according to law and articles of association and/or shareholders agreement could not be a subject matter of challenge under this provision (see paras 11–12).

(2) Section 181 relief was not relevant in cases where there was disagreement to managerial decisions or policy decisions. Such conduct did not necessarily constitute oppression or disregard of a member's interests. Section 181 remedy was only applicable to case where the oppressive conduct affects the petitioning member qua member. The oppression complained of must be continuing at the time the action was brought. The relief should be sought expeditiously. The burden of proof is upon the petitioner, who must prove his allegations by direct evidence or by reasonable inference to be drawn from the documents. The sine qua non to proof was that the petitioner must satisfy the court the act complained of if true amounted to oppression (see paras 14–15).

(3) There could be a legitimate expectation to be a director but not managing director. For, the position of a managing director was one in the interest of the company to be given to the person who could manage and administer it to the satisfaction of the board of directors as well as the majority shareholders. There was no case authority to support the proposition that there could be a legitimate expectation to be a managing director until a person's natural death when the articles of association were silent (see para 17).

(4) The court found that in this case the petitioner did not show any personal relationship based on mutual confidence with the seventh respondent, a corporate body. Personal relationship based on mutual confidence was a pre-requisite and a fundamental element which needed to be established to succeed in a claim relating to quasi partnership. There was no credible evidence or contemporary documents to show that there was collateral agreement or understanding that the petitioner could be the managing director and could always be involved in the management and control of the ninth respondent, notwithstanding that he was only a minority shareholder (see paras 19–20).

(5) From the evidence adduced and from the contemporary documents, the conduct of the respondents had been fair and reasonable to the minority shareholders as a whole and the ninth respondent was run within its constitutional framework; and the law and the management decision, according to sound corporate and commercial reasons. On the other hand, the action and decision of the petitioner after having resigned as managing director and creating disharmony in the economic activities of the company, notwithstanding that there was no allegation by him that his profits as shareholder had been affected, did not strengthen the bona fide of his claim. The respondent's allegation that the petitioner did not come with clean hands and conduct was unreasonable, had merits (see para 21).

[Bahasa Malaysia summary

Pempetisyen, sebagai pemegang saham minoriti, menyatakan bahawa beliau telah ditindas melalui tindakan responden pertama hingga kelapan dan telah memfailkan satu petisyen di bawah s 181 Akta Syarikat 1965 ('Akta') untuk beberapa perintah, inter alia: (i) bahawa beliau berhak menjadi pengarah responden kesembilan selagi beliau memegang saham di responden kesembilan; (ii) satu perintah bahawa responden pertama sehingga ketujuh dan responden kesembilan melantik semula pempetisyen sebagai pengarah urusan responden kesembilan; (iii) satu injunksi bahawa responden pertama halang daripada bertindak sebagai pengarah urusan responden kesembilan. Pempetisyen dalam petisyennya, antara lain, menyatakan bahawa pempetisyen dan responden pertama merupakan penyumbang asas (founding subscriber) dan pengarah kepada responden kesembilan dan tujuan dan objektif penubuhan responden kesembilan adalah untuk menjalankan satu perniagaan usaha sama di antara Kumpulan Malaysia dan Kumpulan Jepun. Syarikat-syarikat usahasama tersebut terdiri daripada pemegang-pemegang saham yang lain dan pengarah-pengarah yang memegang ekuiti-ekuiti berlainan, dan syarikat-syarikat tersebut biasanya dirujuk sebagai 'Kumpulan Syarikat-syarikat Sanyan'. Pempetisyen menyatakan bahawa beliau adalah orang yang bertanggungjawab memulakan pelaburan dan bertanggungjawab terhadap operasi perniagaan tersebut dan sehingga 2003, responden pertama tidak pernah melibatkan diri dalam pengurusan responden kesembilan dan syarikat-syarikat lain di Kumpulan Sanyan secara aktif. Pempetisyen menyatakan bahawa usaha sama tersebut adalah kuasi-perkongsian di antara pemegang-pemegang saham Jepun dan pemegang-pemegang saham tempatan, yang melibatkan pempetisyen dan responden pertama. Perhubungan di antara pempetisyen dan responden pertama mula merosot. Selepas permulaan 2003, responden pertama enggan menemui pempetisyen dan mula mengawal dan sama ada tidak endah atau menolak arahan pempetisyen. Dalam menentang petisyen tersebut, kedua-dua Kumpulan Malaysia dan Jepun, inter alia, menyatakan bahawa: (a) syarikat responden kesembilan bukannya satu kuasi-perkongsian; (b) tiada jangkaan-jangkaan yang sah ataupun persefahaman di antara pempetisyen dan parti-parti tersebut untuk menyokong pengataan pempetisyen bahawa beliau akan selalu menjadi pengarah urusan syarikat responden kesembilan; (c) pempetisyen gagal membuktikan bahawa hal ehwal syarikat responden kesembilan telah di jalankan dalam keadaan yang menindas; (d) pempetisyen telah memfailkan petisyen tersebut dengan tujuan tersembunyi dan tujuan- tujuan kolateral.

Diputuskan, menolak petisyen dengan kos:

(1) Seseorang ahli syarikat dapat menggunakan s 181 Akta tersebut sekiranya dia dapat menunjukkan bahawa nilai pegangan sahamnya di syarikat tersebut telah berkurangan secara serius ataupun sekurang-kurangnya terjejas melalui suatu siri kelakuan di pihak orang-orang yang mempunyai pengawalan de facto syarikat tersebut, yang telah bertindak secara tidak adil terhadap ahli tersebut. Ujian tersebut adalah objektif ie, sama ada seorang pemerhati yang munasabah yang memerhati akibat tindakan-tindkan mereka, akan melihatnya sebagai memudaratkan secara tidak adil hak-hak pempetisyen. Pertukaran perlantikan pengarah urusan syarikat tersebut dilakukan mengikut undang-undang dan artikel penubuhan dan/atau perjanjian pemegang-pemegang saham tidak boleh menjadi tajuk pokok untuk dipertikaikan di bawah peruntukkan ini (lihat perenggan 11–12).

(2) Relif s 181 tidak relevan kepada kes-kes dimana terdapat persefahaman akan keputusan pengurusan atau keputusan polisi. Tindakan sebegini tidak semestinya membentuk penindasan atau kepentingan ahli tidak dihiraukan. Remedi s 181 hanya terpakai kepada kes di mana tingkah laku penindasan menjejaskan ahli pempetisyen sebagai ahli. Penindasan yang diadukan itu mestilah berlanjutan pada masa tindakan tersebut dibawa. Relif seharusnya dituntut secepat mungkin. Beban pembuktian adalah pada pempetisyen, yang mesti membuktikan alegasi-alegasinya melalui keterangan secara langsung ataupun inferens yang munasabah yang diperolehi daripada dokumen-dokumen. Sine qua non untuk pembuktian ialah bahawa pempetisyen harus memuaskan mahkamah bahawa tindakan yang diadukan itu sekiranya benar akan menjadi penindasan (lihat perenggan 14–15).

(3) Kemungkinan terdapat jangkaan sah untuk dijadikan pengarah tetapi bukan pengarah urusan. Oleh kerana, kedudukan seseorang pengarah urusan adalah demi kepentingan syarikat yang diberikan kepada seseorang yang dapat mengurus dan mentadbirnya mengikut kepuasan lembaga pengarah-pengarah dan juga majoriti pemegang-pemegang saham. Tiada otoriti kes yang menyokong kenyataan bahawa terdapat jangkaan sah untuk dijadikan pengarah urusan sepanjang hayat seseorang apabila artikel penubuhan tidak mengandungi sebarang peruntukkan (lihat perenggan 17).

(4) Mahkamah memutuskan bahawa dalam kes ini pempetisyen tidak dapat menunjukkan sebarang perhubungan peribadi berdasarkan saling keyakinan dengan responden ketujuh, sebuah perbadanan korporat. Perhubungan peribadi berdasarkan saling keyakinan adalah pra-syarat dan satu elemen penting yang patut di tubuhkan untuk berjaya dalam satu tuntutan berhubungan dengan perkongisan kuasi. Tiada keterangan yang boleh dipercayai atau dokumen-dokumen semasa untuk menunjukkan bahawa terdapat perjanjian kolateral atau persefahaman bahawa pempetisyen dapat menjadi pengarah urusan dan pada setiap masa dapat melibatkan dengan pengurusan dan pengawalan responden kesembilan, walaupun beliau seorang pemegang saham minoriti (lihat perenggan 19–20).

(5) Daripada bukti yang dilampirkan dan melalui dokumen-dokumen yang dibentangkan, tingkahlaku responden-responden adalah adil dan munasabah

terhadap pemegang-pemegang saham minoriti secara keseluruhan dan responden kesembilan beroperasi dalam rangka perlembagaannya; dan undang-undang dan keputusan pengurusan berdasarkan alasan-alasan korporat dan perdagangan yang mantap. Sebaliknya, tindakan dan keputusan pempetisyen selepas meletak jawatan sebagai pengarah urusan dan menyebabkan kekecohan dalam aktiviti-akviti ekonomi syarikat tersebut, walaupun tiada alegasi-alegasi olehnya bahawa keuntungannya sebagai pemegang saham telah terjejas, tidak menguatkan bona fide tuntutannya. Alegasi responden bahawa pempetisyen tidak datang ke mahkamah dengan hati yang suci, mempunyai merit (lihat perenggan 21).]

Notes

For cases on oppression of minority, see 3(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 579–580.
For a case on relief, see 3(1) *Mallal's Digest* (4th Ed, 2006 Reissue) para 583.
For cases on removal, see 3(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 334–347.

Cases referred to

Bright Pine Mitts Pty Ltd, Re [1969] VR 1002 (refd)
Caparo, Industries plc v Dickman 166 [1990]1 All ER 568 (refd)
City Meat Co Pry Ltd Re [1983] 8 ACLR 673 (refd)
Coliseum Stand Car Service Ltd, Re [1972]1 MLJ 109 (refd)
Ebrahimi v Westbourne Galleries Ltd & Ors [1973] AC 360 (refd)
Eng Man Hin & Anor v King's Confectionary Sdn Bhd [2006] 4 MLJ 421 (refd)
Gee Hoe Chan Trading Co Pre Ltd Re [1991] 3 MLJ 137 (refd)
HR Harmer, Re [1958] 3 All ER 689 (refd)
Hoy Pak Kwai (Suing On Behalf Of Himself Andfor The Benefit Of The Company Aerial Product Industries Sdn Bhd) v Leong Kon Fah & Ors [2007] 1 MLJ 508 (refd)
Jenkins v Enterprise Gold Mines NL [1991] 6 ACR 539 (refd)
Jeremyn Street Turkish Baths Ltd R [1970] 1 WLR 1042 (refd)
Kong Thai Sawmill (Miri) Sdn Bhd; Kong Thai Sawmill (Miri) Sdn Bhd & Ors v Ling Beng Sung Re [1978] 2 MLJ 227 (refd)
Kumagai Zenecon Construction Pte Ltd, Re [1995] 2 SLR 297 (refd)
Peck Constance Emily v Calvary Charismatic Centre Ltd [1991] 2 MLJ 455 (refd)
Prudential Assurance Co Ltd v Newman Industries Ltd (No 2) [1982] 1 All ER 354 (refd)
RA Noble & Sons (clothing) Ltd Re [1983] BCLC 273 (refd)
Ringtower Holding Plc Re [1989] 5 BCC 82 (refd)
Senson Auto Supplies Sdn Bhd, Re [1988] 1 MLJ 326 (refd)
Scottish Co-Operative Wholesale Society Ltd v Meyer [1958] 3 All ER 66 (refd)
Tay Bok Choon v Tahansan Sdn Bhd [1987]1 MLJ 433 (refd)
Yai Yen Hon & Ors v Lim Mong Sam [1997] 2 MLJ 190 (refd)

Legislation referred to

Companies Act 1965 ss 83, 167(4), 181

George Lo (James Lo and Ting Cheng Chingwith him) (George Lo & Partners) for the petitioner.
Willian Yeo (JM Lim & Co) For the first, fifth, sixth, eighth and ninth respondents.

Sim Hui Chuang (Lim Lip Sze with him) (Reddi & Co) for the second, third, fourth and seventh respondents

Hamid Sultan JC:

[1] This is my judgment in respect of the petitioner's petition pursuant to s 181 of Companies Act 1965 (CA 1965), inter alia, seeking the following reliefs namely:

(a) a declaration that the petitioner is entitled to be a director of the ninth respondent as long as the petitioner shall hold shares in the ninth respondent;

(b) an order that the first to seventh and ninth respondents shall reinstate the petitioner as managing director of the ninth respondent at a monthly salary of RM17,000, effective from August 2003;

(c) an order that the first respondent shall cease forthwith to be the managing director of the ninth respondent;

(d) an injunction to restrain the first respondent from acting as managing director of the ninth respondent;

(e) an order that the board of directors of the ninth respondent shall take all steps necessary to reinstate the petitioner as a compulsory bank signatory to all ninth respondent's banking accounts so long as he shall be a director of the ninth respondent;

(f) an order that the ninth respondent shall forthwith pay to the petitioner all declared dividends due by the ninth respondent to the petitioner;

(g) an order that the ninth respondent shall pay all future dividends to its shareholders within 60 days of the date of declaration;

(h) an injunction be granted to restrain the first to seventh and ninth respondents by themselves and their servants or agents from denying the petitioner and his servants or agents from denying the petitioner and his servants or agents or his invitees access to the premises (both office and factory) of the ninth respondent;

(i) an injunction to restrain the first and seventh respondents, by themselves or any proxies, corporate representatives or attorneys acting on their behalf, from exercising their votes at any general meeting of the company to remove the petitioner as director of the ninth respondent;

(j) an order that the first and eighth respondents shall account to the ninth respondent for all profits made by the eighth respondent from all its dealings with the ninth respondent;

(k) damages against the first to seventh and eighth respondents;

(l) in the alternative, an order that the first to seventh respondents shall purchase the shares of the petitioner in the company at a consideration based on the valuation of the shares of the company by a reputable firm of public accountants based in Kuala Lumpur, within 90 days from completion of the valuation;

A (m) that the shares of the company be valued at the date of this petition (22 August 2006) and the costs of such valuation be borne by the first and seventh respondents.

[2] There are two firms of solicitors representing the respondents. First, fifth, sixth, B eighth and ninth respondents ('Malaysian Group') are represented by one firm of solicitors and second to fourth and seventh respondents ('Japanese Group') are represented by the other firm of solicitors.

[3] I have also on this day delivered a judgment on the petitioner's petition to wind C up Sanyan Holdings Sdn Bhd on just and equitable ground. I find many of the allegations in this petition are repetitions from the previous petition. Some of my observations in that judgment will equally apply here even though I have not set them out herein.

D **[4]** The petitioner in the petition, inter alia, says; (i) the petitioner and the first respondent are founding subscriber and director of the ninth respondent; (ii) the second to fourth respondents are nominees of the seventh respondent. The fifth respondent is the eldest son of the first respondent. The sixth respondent is the nominee of the first respondent. The seventh respondent is a shareholder of the ninth E respondent. The eighth respondent is company owned and controlled by the first respondent. The petitioner and the first to sixth respondents sit in the board of directors of the ninth respondent; (iii) the object and purpose for the incorporation of the ninth respondent was to undertake a joint venture business with the Malaysian Group and the Japanese Group.

F **[5]** Under the caption of 'Historical Background' the petitioner says; (i) the petitioner had come to know the first respondent and his brother the late Datuk Mohammed Arip (deceased) as early as 1970 when working in Ding Brothers Sdn Bhd; (ii) the petitioner and the first respondent has set up a number of joint ventures business for the last 25 years. The petitioner alleges that the joint venture businesses G were of quasi-partnership business in nature and based on mutual trust, confidence and the reciprocal duties to act with utmost good faith to each other. [This is an issue which is seriously denied by the first respondent, and a focal point of challenge]. The joint venture business of the petitioner and the first respondent includes a number of companies namely; (i) Binta Corporation Sdn Bhd; (ii) Marine Utama H Sdn Bhd; (iii) Sanyan Sdn Bhd; (iv) Sanyan Lumber Sdn Bhd; (v) Pembangunan Hasil Baik Sdn Bhd; (vi) Mansang Holdings Sdn Bhd; (vii) Sanyan Development Sdn Bhd; (viii) Sanyan Sawmill Sdn Bhd; (ix) Sarachi Services Sdn Bhd; (x) Goodmatch Sdn Bhd; (xi) Sanyan Wood Industries Sdn Bhd; (xii) Sanyan Holdings Sdn Bhd; (xiii) Sanyan-Soon Hup Sdn Bhd. The joint venture companies consist of I other shareholders and directors holding different equities, and the companies are commonly referred to as 'the Sanyan Group of Companies'. The petitioner alleges that the petitioner was the one who was responsible for initiating the investment and took charge of the business operation. Until 2003, the first respondent was not involved in the active management of the ninth respondent and other companies in the Sanyan Group. [Here, the petitioner does not disclose why the first respondent

became involved. The first respondent and the Japanese Group say that the petitioner voluntarily resigned as a managing director as he was elected as State Assemblyman and wanted to concentrate on politics].

[6] Under the caption of 'joint venture', the petitioner says; (i) a joint venture agreement was initiated with the Japanese Group with one of the companies of the Sanyan Group of companies known as Goodmatch Sdn Bhd. Under the joint venture agreement, the Sanyan Group will hold 51% equity and the Japanese Group will hold 49% equity. For the purpose of operating the joint venture, the ninth respondent was incorporated. The petitioner alleges that the joint venture was a quasi-partnership between the Japanese shareholders and the local shareholders, comprising of the petitioner and the first respondent. The business of the ninth respondent has been successful from inception and the shareholders were paid handsome dividends annually. The details of the shareholding of the ninth respondent are as follows:

	Shareholders	No. of Shares	Percentage
a.	Datuk Haji Mohammad Tufail bin Mahmud	4,200,000	21%
b.	Dato' Ting Check Sii	4,000,000	20%
c.	Dayang Siti Aminah bte Abang Bolhassan	150,000	0.75%
d.	Hajjah Hapipah bte Hj Mohd Kaka	122,000	0.61%
e.	Masjidah bte Mohamad Fauzi	100,000	0.50%
f.	Tinya ak Ajang	75,000	0.375%
g.	Dayang Hadijah bte Awang Kadir	75,000	0.375%
h.	Morshidi bin Omar @ Draman bin Omar	78,000	0.39%
i.	Hanifah Hajar Taib	1,000,000	5%
j.	Goodmatch Sdn Bhd	400,000	2%
k.	Ishinomaki Plywood Manufacturing Co Ltd	9,800,000	49%

[7] Under the caption 'Act of Oppression', the petitioner says:

(i) in 2002 the petitioner attended the graduation ceremony of the first respondent's daughter, Anita Hamidah Tufail in San Francisco, and then the first respondent informed the petitioner that he would like to bring his graduate daughter, Anita into Sanyan Group, as she has many new ideas for the Group. The petitioner did not object. Thereafter relationship between the petitioner and the first respondent deteriorated. After early 2003, the first respondent refused to meet with the petitioner and started to take control of the Group and either ignore or override the petitioner's instruction;

(ii) on 25 July 2003, the Japanese directors informed that they had been requested by the first respondent to support his appointment as managing director and that they intend to support the first respondent to protect their foreign investment in Sarawak as the first respondent is an influential man in Sarawak. Later on the day the petitioner was forced to resign as managing director under the threat of the first respondent that he will suffer the humiliation of being removed if he did not do so voluntarily. The first respondent assured that the

petitioner would be appointed as deputy executive chairman if he relinquished his post. The first respondent became the chairman and executive director, after which the ninth respondent did not pay the petitioner's managing director's salary of RM17,000 per month. On 18 November 2003, the petitioner was also removed as a bank signatory. Since early 2003, about eight long time senior management staffs of Sanyan Group who were perceived to be appointees of the petitioner were either dismissed or pressured into resigning. These staffs were publicly humiliated by full page advertisements in the newspapers framed to look like obituary notices;

(iii) in the middle of 2004, dividends were paid by the respondent in full to other shareholders in April and June except the petitioner. The petitioner's dividend of RM1,600,000 was paid in two installments, one in July and the other in 2004;

(iv) on the 12th annual general meeting (AGM) of the ninth respondent held on 26 April 2004, the shareholders refused to re-elect the petitioner's son as director whilst the first respondent's son, the fifth respondent was re-elected;

(v) the minutes of the AGM were only forwarded after more than a year under cover of a letter dated 27 September 2004, together with the minutes of the AGM held on 26 April 2004. The minutes contained a number of untrue statements. When the petitioner pointed out the discrepancies by letter, the first and second respondents wrote a letter dated 5 February 2005 alleging that the petitioner; (a) had been uncooperative in rendering accounts despite being requested to do so; (b) had been negligent and in breach of fiduciary duties in failing to act in the best interest of the company and its members; (c) had exercised his powers as managing director for improper and personal purposes; (d) staff under the petitioner's management had been instructed to engage in activities to promote the petitioner's political activities; (e) has failed to act with care, skill and diligence in the performance of his duties as managing director; and (f) has acted in breach of his duties as managing director;

(vi) However, the first and second respondents had refused to furnish particulars and instances of the allegations. Further, the petitioner was not allowed to inspect the accounts during reasonable working hours and in consequence, the petitioner filed an action in Sibu High Court for inspection of accounts. Besides, despite a negotiated agreement the ninth respondent had failed and neglected to give such access to the petitioner;

(vii) the petitioner who is supposed to be the deputy executive chairman is now only a director, completely ousted from the management of the ninth respondent and is kept in the dark as to the affairs of the ninth respondent in which the petitioner has a legitimate expectation to participate in the management as managing director;

(viii) the petitioner has just discovered that the first respondent has made secret profits at the expense of the ninth respondent, through the eighth respondent a company owned by the first respondent. Particulars are as follows:

2003	The Company paid Hamidah Trading for purported log purchases about	RM41m

2004	The Company paid Hamidah Trading for purported log purchases about	RM80m
2005	The Company paid Hamidah Trading for purported log purchases	
	• January about Trading 'commission' or 'handing fees' for	RM2.5m
	• February to December	RM2.6m

(ix) the first to sixth respondents are in breach of their fiduciary duties owed to the ninth respondent as directors of the ninth respondent and their breach has unlawfully and unjustly enriched the first respondent.

(x) by a notice of board meeting of Pelita Towerview Sdn Bhd, the first respondent proposed a resolution to deprive the petitioner of his personal office on Level 27 Wisma Sanyan and to convert it to a board room. The petitioner has to obtain an ex-parte injunction in Sibu High Court from restraining Pelita Towerview Sdn Bhd from doing so. The ex-parte order was subsequently replaced by an interlocutory injunction granted by consent of the parties. The attempt by the first respondent is part of a series of acts taken to oust the petitioner from the management of the Sanyan Group which includes the ninth respondent. Even though the petitioner has been retained as a director on the board of the ninth respondent company, the petitioner has been wrongfully excluded from any participation in the management and affairs of the ninth respondent company. There was an understanding between the first respondent and the petitioner, evidenced by conduct, since the start of their first joint venture business and over the past 25 odd years, that the petitioner would be the managing director of the companies within the Sanyan Group in charge of the daily management and operations of the Group. In breach of this fundamental understanding, the first respondent has wrongfully ousted the petitioner as managing director and excluded the petitioner from his control of the daily management and operations of the ninth respondent company. In doing so, the first respondent was aided and abetted by the second to sixth and seventh respondents. The conduct of the first to sixth and seventh respondents show: (i) a lack of probity and fair dealing in the affairs of the company to the prejudice of the petitioner; (ii) a visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect. For the reasons aforesaid, the petitioner says: (i) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to him or in disregard of his interests as a member of the company; and/or (ii) that some act of the company has been done or threatened or some resolution of the members has been passed which unfairly discriminates against or is otherwise prejudicial to him as a member of the company.

[8] In opposing the petition, the Malaysian Group, inter alia, submits that the petition ought to be dismissed on the grounds that:

(a) the ninth respondent company is not a quasi-partnership;

(b) there are no legitimate expectations or understanding between the petitioners with any of the parties to support the allegation that the petitioner was to always be the managing director of the ninth respondent company;

(c) the petitioner has not come to this court with clean hands;

(d) the petition is for *ulterior motives*;

(e) there has been an inordinate delay;

(f) there is no reason why this court ought to force or order the respondent shareholders to buy out the petitioner and winding up is not an appropriate remedy here;

(g) the petitioner has failed to prove that the affairs of the ninth respondent company has been concluded in a manner which is oppressive, in disregard of his interests, is unfairly discriminatory or prejudicial to the petitioner to warrant the granting of any of the prayers in the petition;

(h) the petitioner's arguments that he is entitled to be managing director and has been excluded in the management of the company and it is quasi partnership is misconceived;

(i) the petitioner has come with unclean hands and unreasonable conduct. After voluntarily relinquishing the position of managing director, the petitioner had a change of mind. This is manifestly shown in prayers (a) and (b) of the petition wherein the petitioner has prayed for his reinstatement as managing director of the ninth respondent company. The petitioner has acted in an unreasonable and disruptive manner, contrary to the interests of the ninth respondent company. The petitioner refused to participate or co-operate in management, made baseless allegations and gave excuses not to come to the offices of the ninth respondent company. The petitioner, after refusing to co-operate with the management and acting deliberately to frustrate the management of the ninth respondent company, cannot now complain that he had been excluded from management merely because he wants to get back into management as managing director;

(j) there has been inordinate delay. Much of the matters complained of by the petitioner relate to matters occurring from or about mid-2003;

(k) buying out the shares of the petitioner or winding up of the ninth respondent is not appropriate remedy. There is no reason why this court ought to order the ninth respondent company to be wound up or force the shareholders to buy out the petitioner just because they do not like each other. Following the reasoning of the Court of Appeal's decision in *Hoy Pak Kwai (Suing On Behalf Of Himself And for The Benefit Of The Company Aerial Product Industries Sdn Bhd) v Leong Kon Fah & Ors* [2007] 1 MLJ 508:

(a) the ninth respondent company is a highly profitable and lucrative company as may be seen in its audited accounts. There is no indication that this state of affairs will not continue nor has the petitioner made any allegations to that effect. To the contrary, the petitioner himself acknowledges the commercial success of the ninth respondent;

(b) even if there has been a loss of confidence and trust between the petitioner and the respondents, the substratum of the ninth respondent company is still intact and the ninth respondent company is well managed even without the petitioner as managing director. There was no oppression to remove the petitioner as managing director. He voluntarily resigned. Further, the petitioner cannot expect the fees of RM17,000 given to him when he was a managing director after he has resigned. The removal of bank signatory cannot be treated as oppression as the respondent complains that the petitioner was not co-operative. There is no entitlement or requirement to elect the petitioner's son as a director. Secondly, the petitioner has conveniently omitted to note that it is apparent from the attendance lists of all board meetings that Mr Ting Sing Dean never attended a single meeting. There is no oppression in payment of dividends as some shareholders had requested for earlier payment for good reasons, as set out in the affidavit. The dividends were actually paid. Not discharging the petitioner as a guarantor in this case cannot amount to oppression as he is still a director. Untrue statements in the minutes, if they be true, are subject to correction in the next meeting and this cannot be a basis to allege as oppressive act.

[9] The Japanese Group in opposing the petition, inter alia, submits as follows:

(a) the ninth respondent is not a quasi-partnership as stated in *Ebrahimi v Westbourne Galleries Ltd & Ors* [1973] AC 360;

(b) there has been laches and inordinate delay;

(c) the petitioner has filed the petition with ulterior motives and collateral purposes;

(d) the allegation of 'Historical Background' in paras 12 to 19 of the petition are matters between the first respondent and the petitioner and the Japanese Group are not privy to those matters;

(e) the allegations of oppression has no merits, as the acts of oppression allegedly complained of must affect the petitioner as a shareholder in respect of his interests as a member or shareholder or qua shareholder;

(f) petitioner was not ousted from management. He remains as a director. The petitioner relinquished his position as a managing director and supported the first respondent to be elected as the managing director. The relevant minutes of meeting of the board of directors held on 25 July 2003 show that the petitioner wanted to dedicate more time to politics and related commitments. The same minutes also recorded that the petitioner 'sought the board support for the new managing director and to further strengthen the company' and 'the board unanimously resolved to appoint Dato' Haji Mohamed Tufail Bin Mahmud as executive chairman cum managing director …'. The petitioner cannot now complain and challenge the very decision of the board of directors in which he himself took part;

(g) as the petitioner had resigned as a managing director he cannot be paid the managing director's salary of RM17,000;

(h) the petitioner's removal as a signatory to bank cheque is a managerial decision of the board of directors and the petitioner has no legal right or entitlement to be a compulsory signatory;

(i) the eight long time staff whom the petitioner complained was dismissed has nothing to do with the ninth respondent;

(j) there was no refusal to pay dividends. The seventh respondent had requested for earlier payment of dividend for the purpose of reconciliation and consolidation of accounts with its holding company in Japan. The board agreed and the payment was made;

(k) although the petitioner disputes Goodmatch's claim, it was felt prudent that the disputes between the petitioner and Goodmatch should be resolved between themselves first before the ninth respondent makes payment;

(l) the petitioner implies that he has a personal liability of 35m ringgit as a guarantor. The petitioner is still a director of the company and he has not asked to be removed as a guarantor. Section 83 of the Contracts Act 1950 states that a continuing guarantee may at any time be revoked by the surety as to future transactions by notice to the creditor;

(m) evidence will show that the petitioner's son never attended any of the board meetings and in consequence, he was not re-elected;

(n) minutes of meeting are subject to corrections. The allegedly untrue statements can be corrected in subsequent meetings. The petitioner has access to minutes of meeting and is entitled to attend all meetings where minutes are confirmed or corrected. Only long after the minutes had been confirmed did the petitioner make false allegations about the minutes and alleged that the minutes contained untrue statement. In any event, these are not matters of oppression within s 181;

(o) the issue of inspection of accounts is a right of director and not a shareholder, as stated in s 167(4) of CA 1965. Section 181 relates to interests of members and shareholders and not rights of directors. The petitioner has ventilated his grievance through the proceedings in Sibu, High Court;

(p) the allegation that the first to seventh respondents were in breach of fiduciary duty in the purported allegation of secret profits made by the first respondent through the eighth respondent is not true. As early as 2003, when the petitioner was the managing director, the ninth respondent was trading with the eighth respondent. Payments made by the ninth respondent in 2003, 2004 as well as 2005 are not profits of the eighth respondent but are the purchase price of logs supplied to the ninth respondent. The trading commission or handling fees paid to the eighth respondent are for services rendered. Such trading commission or handling fees are common in the industry;

(q) the allegations relating to Pelita Towerview Sdn Bhd do not concern the ninth respondent.

[10] It is trite that s 181 of the CA 1965 gives the court wide powers to remedy oppression and in the alternative to order winding up of the company. Though the

discretion of the court is very wide as a matter of policy, the court has to exercise its discretion with utmost care and wisdom, failing which it will stand as a precedent for any person unhappy with the management of the company to file frivolous petition to frustrate the business of the company and thereby cause loss and damage to the company. The court will rarely want to substitute the managerial decision of the company for every difference in opinion of shareholders on the ground that the said decision is oppressive. When exercising the discretion the court must consider inter alia;

(i) the need to respect the majority decision of the members to manage the affairs of the company within the rights conferred under the law to be read with the memorandum and articles of association of the company;

(ii) the need to protect the minority from any oppressive conduct which does not subscribe to the concept of corporate accountability and transparency;

(iii) to provide only the minimum remedy justifiable to the actual needs of the occasion unless otherwise warrants to ensure the productivity of the company towards social and economic growth are not hampered;

(iv) not to provide the remedy if the relief sought is not appropriate or the conduct of the petitioner will disqualify the petitioner from proceeding against the company.

[11] A member of the company will be able to bring himself within the section if he can show that the value of his shareholding in the company has been seriously diminished or at least seriously jeopardised by reason of a course of conduct on the part of those persons who have de facto control of the company, which has been unfair to the member concern. The test is objective, ie, whether a reasonable bystander observing the consequences of their conduct, would regard it as having unfairly prejudiced the petitioner's interests,[*Re RA Noble & Sons (clothing) Ltd* [1983] BCLC 273; *Re Ringtower Holding Plc* [1989] 5 BCC 82].

[12] The change in the appointment of managing director or directors of the company done according to law and articles of association and/or shareholders agreement cannot be a subject matter of challenge under this provision. In *Re Jeremyn Street Turkish Baths Ltd* [1970] 1 WLR 1042 (CA,) Buckley J observed:

> In our judgment, oppression occurs when shareholders, having a dominant power in a company, either (1) exercise that power to procure that something is done or not done in the conduct of the company's affairs or (2) procure by an express or implicit threat of an exercise of that power that something is not done in the conduct of the company's affairs; and when such conduct is unfair or, to use the expression adopted by Viscount Simonds in *Scottish Co operative Wholesale Society Ltd v Meyer* [1959] AC 324, 342 'burdensome, harsh and wrongful 'to the other members of the company or some of them, and lacks that degree of probity which they are entitled to expect in the conduct of the company's affairs: see *Scottish Co operative Wholesale Society Ltd v Meyer* and in *Re HR Harmer Ltd* [1959] 1 WLR 62. We do not say that this is necessarily a comprehensive definition of the meaning of the word ' oppressive ' in s 210, for the affairs of life are so diverse that it is dangerous to attempt a universal definition. We think, however, that it may serve as a sufficient definition for the present purpose. Oppression must, we think, import that the oppressed are being constrained to submit to something which is unfair to them as the result of some

overbearing, act or attitude on the part of the oppressor. If a director of a company were to draw remuneration to which he was not legally entitled or in excess of the remuneration to which he was legally entitled, this might no doubt found misfeasance proceedings or proceedings for some other kind of relief, but it would not of itself amount to oppression. Nor would the fact that the director was a majority shareholder in the company make any difference, unless he had used his majority voting powers to procure or retain the remuneration or to stifle proceedings by the company or other shareholders in relation to it.

[13] In *Re Kong Thai Sawmill (Miri) Sdn Bhd; Kong Thai Sawmill (Miri) Sdn Bhd & Ors v Ling Beng Sung* [1978] 2 MLJ 227, Lord Wilberforce opined:

Secondly, for the case to be brought within s 181(1)(a) at all, the complaint must identify and prove 'oppression' or 'disregard'. The mere fact that one or more of those managing the company possess a majority of the voting power and, in reliance upon that power, make policy or executive decisions, with which the complainant does not agree, is not enough. Those who take interests in companies limited by shares have to accept majority rule. It is only when majority rule passes over into rule oppressive of the minority, or in disregard of their interests, that the section can be invoked. As was said in a decision upon the United Kingdom section there must be a visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect before a case of oppression can be made (*Elder v Elder & Watson Ltd* [1952] SC 49): their Lordships would place the emphasis on 'visible'. And similarly 'disregard' involves something more than a failure to take account of the minority's interest: there must be awareness of that interest and an evident decision to override it or brush it aside or to set at naught the proper company procedure (per Lord Clyde in *Thompson v Drysdale* [1925] SC 311, 315). Neither 'oppression' nor 'disregard' need be shown by a use of the majority's voting power to vote down the minority: either may be demonstrated by a course of conduct which in some identifiable respect, or at an identifiable point in time, can be held to have crossed the line'.

[14] Section 181 relief is not relevant in cases where there is disagreement to managerial decisions or policy decisions. Such conduct does not necessarily constitute oppression or disregard of a member's interests. Section 181 remedy is only applicable to case where the oppressive conduct affects the petitioning member qua member. The oppression complained of must be continuing at the time the action is brought. The relief should be sought expeditiously. In *Re Senson Auto Supplies Sdn Bhd* [1988] 1 MLJ 326, Edgar Joseph Jr. (as he then was) opined:

First, I regard with considerable skepticism the bona fides of the petitioners in presenting this petition in order to obtain relief from alleged oppression, having regard to the alternative prayer in it for 'rescission of all those shares allotted to the petitioners on 30 April 1986, and repayment of $25,381 paid therefore'. There is authority for saying that even if the directors or majority shareholders have been guilty of improper or unreasonable conduct so that there appears to be a prima facie case for relief, it will be refused if the real purpose of the petitioners is to obtain payment of money owed by the Company (see *Re Bellador Silk Ltd* [1965] 1 All ER 667).

Secondly, I noted that the major matters complained about by the petitioners appear to have been spread out over a considerable period of time. It is settled law that delay by petitioners in initiating proceedings after they have realised that they have been victims of a scheme of oppression will induce the court to refuse relief, since this indicates that they have acquiesced in the conduct complained about and their complaints are not therefore made in good faith (see *Re Jermyn Street Turkish Baths Ltd* [1971] 3 All ER 184).

[15] The burden of proof is upon the petitioner, who must prove his allegations by direct evidence or by reasonable inference to be drawn from the documents. The sine qua non to proof is that the petitioner must satisfy the court the act complained of if true amounts to oppression.

[16] Learned author Walter Woon On Company Law has catalogued different instances of oppression under which the court has granted relief. They are as follows; (i) dominant members advancing their own interests. (ii) disregard of minority's rights and interests; (iii) abuse of voting powers; (iv) expropriation of members property; (v) exclusion from management; (vi) management deadlock; (vii) autocracy in family company; (viii) breakdown in relationship between corporators; (ix) depriving the minority of information.

[17] There can be a legitimate expectation to be a director but not managing director. For, the position of a managing director is one in the interest of the company to be given to the person who can manage and administer it to the satisfaction of the board of directors as well as the majority shareholders. There is no case authority to support the proposition that there can be a legitimate expectation to be a managing director until a person's natural death when the articles of association are silent. Learned author Walter Woon has set out the practical heads of legitimate expectation as follows; (i) it is a legitimate expectation on the part of members of a company that the company should be run in the interest of all the members and not only of the majority, [see *Re HR Harmer* [1958] 3 All ER 689; *Re Coliseum Stand Car Service Ltd* [1972] 1 MLJ 109; *Re City Meat Co Pry Ltd* [1983] 8 ACLR 673]; (ii) it is a justifiable conviction of members of a company that they should receive a fair share of the profits of the business [see *Re Gee Hoe Chan Trading Co Pre Ltd* [1991] 3 MLJ 137]; (iii) it is also a rightful assumption of a member of a company that the directors will act honestly and diligently, [see *Jenkins v Enterprise Gold Mines NL* [1991] 6 ACR 539]; (iv) in the case of an incorporated partnership or a family business, it may be a reasonable expectation of minority shareholders that they (or their faction) should have board representation to safeguard their interests, [see *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 (House of Lords); *Tay Bok Choon v Tahansan Sdn Bhd* [1987]1 MLJ 433 (Privy Council on appeal from Malaysia); *Re Gee Hoe Chan Trading Co Pte Ltd* [1991] 3 MLJ 137]; (v) it is a genuine requirement of a member that directors will account to the members for their stewardship of the company, [see *Caparo, Industries plc v Dickman 166* [1990]1 All ER 568, 583]; (vi) the member of a joint venture company trusts that the majority shareholder will not run the company as if it was his own business, disregarding the interests of his partner, [see *Re Kumagai Zenecon Construction Pte Ltd* [1995] 2 SLR 297]; (vii) in the case of a guarantee company, it is also a valid assumption that natural justice will be observed where expulsion of a member is concerned, [see *Peck Constance Emily v Calvary Charismatic Centre Ltd* [1991] 2 MLJ 455, 468].

[18] I have read the petition, affidavits and submissions in detail. I do not think this is a fit and proper case to entertain an application under s 181 of CA 1965. My reasons are as follows:

[19] It is my finding that in this case the petitioner did not show any personal relationship based on mutual confidence with the seventh respondent, a corporate body. Personal relationship based on mutual confidence is a pre-requisite and a fundamental element which needs to be established to succeed in a claim relating to quasi partnership. In *Yai Yen Hon & Ors v Lim Mong Sam* [1997] 2 MLJ 190, Mokhtar Sidin JCA opined:

> The petitioner did not claim any personal relationship with the corporate shareholders of the company and the Court could not see how a personal relationship could be established with a corporate body. Any personal relationship which existed was only between the individual shareholders and could not therefore give rise to a quasi partnership to the exclusion of the minority corporate shareholders. The High Court Judge was wrong in holding that where a personal relationship with some of the shareholders of the company exists, the minority shareholders can be ignored …
>
> ... We wonder how one individual shareholder can establish a personal relationship of quasi partnership with a corporate shareholder...

[20] There was no credible evidence or contemporary documents to show that there was collateral agreement or understanding that the petitioner can be the managing director and can always be involved in the management and control of the ninth respondent, notwithstanding that he is only a minority shareholder. In *Eng Man Hin & Anor v King's Confectionary Sdn Bhd* [2006] 4 MLJ 421, Ramly J opined:

> It is to be noted that the petitioners, in the present case alleged 'an intention' in para 6 of the petition. The petitioners had failed to aver that there is an agreement or understanding between the parties with regards to the alleged sharing of management control of the first respondent. The petitioners have not shown by whom and how the agreement or understanding was made with each of the second fifth respondents. Since to restrain each of the second fifth respondents, it is incumbent on the petitioners to show that each of them has made such an agreement with the petitioners. In the absence of such an agreement, it would be unfair to restrain any of the second fifth respondents, who did not enter into such an agreement or undertaking with the petitioners. Without such an agreement, the question of 'breach' does not arise at all. In the circumstances, an unilateral intention unannounced by the petitioner is not sufficient. The petitioner must prove the existence of such an alleged underlying understanding is common to all shareholders, (see *Re Ringtower Holdings Plc* [1989] 5 BCC 82; *Tuan Haji Ishak bin Ismail v Leong Hup Holdings Bhd* [1996] 1 CLJ 393; *Re Blue Arron Plc* [1987] BCLC 585). It must be shown that the understandings or intentions are common to all the shareholders and is not the result of a private bargain between one but not all the shareholders, (see also: *Loh Siew Cheang v Corporte Powers, Controls, Remedies and Decision Making* [1996] MLJ 152).
>
> The petitioners have failed to provide any credible evidence as to the parties, dates, venue and form of the agreement or understanding that they are alleging that they will be entitled to share equally the management control between the petitioners on one part and the second-fifth respondents on the other part on a 50:50 basis.
>
> There is no reference to any collateral agreement or understanding for the alleged sharing of management control in the first directors meeting held on 20 August 1993, immediately after the first respondent was incorporated. The said meeting adopted the Memorandum and Articles of Association without qualification. There is also no provision in the Articles of Association referring to the alleged sharing of management control. Such an agreement or understanding must be incorporated in the form of a separate collateral agreement

between all the shareholders or alternatively, must be provided for in the Articles of Association. This has been stressed by Lord Wilberforce in *Ebrahimi*'s case as follows:

> If it is so defined by the articles or for example, by the articles supplemented by a shareholders' agreement, then there is little room for finding further legitimate expectations beyond those outlined in the documents.

The importance of the Memorandum and Articles of Association have been emphasized by the Court of Appeal in *Tuan Haji Ishak bin Ismail*'s case and *Fair View Schools Bhd v Indrani a/p Rajaratnam* [1998] 1 CLJ 285 CA In Tuan Haji Ishak bin Ismail's case, Mahander Shanker JCA held at p. 421, that:

> ... if they regarded these matters as important, we think it was imperative not only that agreements on such matters should have been put into writing but also the articles of association should have been amended so as to substantiate the claim that is being made.

The provisions of the memorandum and articles of association constitute the statutory contract between the members or shareholders of a company and must be given due regard. The petitioner cannot ignore it on a vague, unparticularised and unsubstantiated allegation of a legitimate expectation, (see: *Dato' Low Mong Hua v Banting Hock Hin Estate Co Sdn Bhd & Ors* [2003] 1 LNS 387; [2003] 6 AMR 245). A claim for legitimate expectation to management said to exist outside the Articles of Association is unlikely to succeed. (see *Beh Chun Chuan v Paloh Medical Centre Sdn Bhd & Ors* [1999] 7 CLJ 1; [1999] 7 CLJ Supp 1). A company is an association of persons for economic purpose, usually entered into with legal advice and some degree of formality. The terms of the associations are contained in the articles of association and sometime in collateral agreements between the shareholder. Thus the manner in which the affairs of the company may be conducted is closely regulated by rules to which the shareholders have agreed, (per Lord Haffman in *O'Neill*'s case).

There is no reference of the alleged sharing of management control or any evidence of a collateral agreement or understanding in the minutes of the board meeting held on 15 December 1993 on the approval by the directors to takeover the business of the first King's Confectionery and second King's Confectionery.

There is also no reference to the alleged sharing of management control in the minutes of 13 July 2005 board meeting when the proposals for the appointment of additional directors were not approved or when the petitioners sons' appointment as associate directors were cancelled. It would be normal in the ordinary course of human nature for the petitioners to have referred to this collateral agreement if this existed, during the discussions. This omission shows that the allegation is an afterthought…

[21] From the evidence adduced and from the contemporary documents, the conduct of the respondents have been fair and reasonable to the minority shareholders as a whole and the ninth respondent has been run within its constitutional framework; and the law and the management decision as the respondents say, according to sound corporate and commercial reasons. On the other hand, the action and decision of the petitioner after having resigned as managing director and creating disharmony in the economic activities of the company, notwithstanding that there is no allegation by him that his profits as shareholder has been affected, does not strengthen the bona fide of his claim. The respondent's allegation that the petitioner does not come with clean hands and conduct is unreasonable, has merits. In *Hoy Pak Kwai v Leong Kon Fah & Ors*, James Foong JCA on the facts of the case opined:

A I accept this as a logical explanation and I find that there was nothing sinister about this move by the first and second respondents, it was just a marketing strategy and policy adopted by API …

... As to the appellant's claim of there being a breach of fiduciary duty, I find this absurd. As correctly pointed out by the trial judge, the first and second respondents are substantial
B shareholders and directors of API. They owe no fiduciary duty to the appellant in exercising their vote at board meetings and as shareholders they owe no duty to anybody as to how they exercise their vote...

... These loathsome activities had disrupted the smooth running of the company and instead of concentrating on maintaining profitability and improving productivity, the energy of the directors was diverted to entertaining internal squabbles caused by the appellant... When
C this is a fact, then the appellant cannot now turn around and blame the first and second respondents …

… Under these circumstances there is no justifiable reason why the court in exercising its judicial discretion, based on just and equitable rule, should accede to the demands of the appellant particularly when there is cogent evidence that he did not come with clean
D hands…

[22] I also find that the conduct of the petitioner is unreasonable to insist that he hold the position of the managing director when there is evidence to show that he resigned and supported the appointment of the first respondent to be the managing
E director. In *Loh Eng Leong & Ors v Lo Mu Sen & Sons Sdn Bhd & Ors* [2000] 5 MLJ 529, Zulkefli bin Ahmad Makinudin J (as he then was) opined:

...It is also my finding that even if the petitioners claimed that they had a legitimate expectation the manner that its should be managed as earlier intended when it was first incorporated, they stand to lose that equity if they abandon the task entrusted to them.
F In such a case, they cannot subsequently complain that they have been excluded from management merely because they wanted to get back into management …

In *Re Bellador Silk Ltd* [1965] 1 All Er 667, Plowman J opined:

... A petition which is launched not with the genuine object of obtaining the relief claimed, but with the object of exerting pressure in order to achieve a collateral purpose is, in my
G judgment, an abuse of process of court...

[23] The allegations of the petitioner are stale as it originates from 2003, and in any event there is an inordinate delay even to pursue the petitioner's grievance. In *Loh Eng Leong & Ors* Zulkefli bin Ahmad Makinudin J (as he then was) opined:
H

... It is also my finding that there has been an inordinate delay by the petitioners in filing this petition and added to that fact it can safely be said that the petitioners had acquiesced to all acts and decision taken by the Board of Directors of the first respondent in relation to all the matters which they had now raised and alleged against the respondents...

I ... In the case of *Re Senson Auto Supplies Sdn Bhd* [1988] 1 MLJ 326, his Lordship Edgar Joseph Jr J (as he then was) in his judgment on this point, inter alia, states that it is settled law that delay by petitioners in initiating proceedings after they have realised that they have been victims of a scheme of oppression will induce the court to refuse relief, since this indicates that they have acquiesced in the conduct complained about and their complaints are not therefore made in good faith …

[24] I do not think that an order to force the shareholders to buy out the petitioner's shares or to wind up the ninth respondent purely on the basis there is misunderstanding between the parties is appropriate under s 181 remedy, more so when the ninth respondent is making profits, under a good management which in principle subscribe to corporate transparency and accountability. In *Hoy Pak Kwai*, James Foong JCA opined:

> ...Though I believe that the appellant has lost confidence with the first and second respondents and visa versa I am of the opinion that the substratum of the company is still intact. The company continues to operate as an entity separate and distinct from its shareholders. As an ongoing profitable enterprise there is no reason why the court should order it to be wound up or force one shareholder to buy out the other just because one does not like the other. Without the appellant as a director. API is, relatively speaking, well managed and this is manifested by the rather substantial dividends dished out from time to time to shareholders for their investments. Under these circumstances there is no justifiable reason why the court in exercising its judicial discretion, based on just and equitable rule, there is cogent evidence that he did not come with clean hands...

[25] The right to be a signatory to cheque is a managerial decision. From the evidence there are allegations to show that the petitioner after having entered into politics has not been cooperating with the administrative affairs of the ninth respondent. In*Eng Man Hin & Anor v King's Confectionery Sdn Bhd* [2006] 4 MLJ 421, Ramly Ali J. opined:

> The petitioners complained that they had been removed as bank signatories. The court is of the view that this complaint is without merit. It was caused by the petitioners' own conduct in refusing to sign cheques to pay for the trademarks suit undertaken by the first respondent. The second fifth respondents as majority directors of the company are entitled under the articles of association to change the bank signatories when need be. The second fifth respondents are acting in the interest of the company, to commence the trademarks suit and to make proper payments for that purpose. From the facts of the case, the second fifth respondents were acting properly and in good faith for the best interest of the company. In doing so they have retained the right of the petitioners to sign for cheques exceeding RM100,000. By reason of the above the petitioners are not entitled to ask for the court's just and equitable remedy since they have not come with clean hands being the cause of the problems...

[26] The removal of staff has nothing to do with the ninth respondent and other ancillary issues do not come within the purview s 181 of CA 1965. In *Eng Man Hin & Anor v King's Confectionery Sdn Bhd*:

> The petitioners also made various other minor complaints relating to employment of new staff without their approval; removal of company's secretary and mode of conducting business in setting up and operating unprofitable outlets and kiosks. The court finds no real merits on these complaints. They are purely domestic managerial decisions undertaken by the majority of the board of directors in their day today management of the first respondent company, for the best interest of the company's operation and business. There is no element of oppression or other wrongful conducts on the part of the second fifth respondents shown by the petitioners...

[27] The failure to re-elect the petitioner's son, Mr Ting Ding Dean who never attended a single meeting as per the allegation of the respondents cannot be said as unjust act by the shareholders or the board of directors, giving rise to a remedy under s 181 of CA 1965.

[28] The petitioner's allegation that he has not been given access to accounts is not a matter which can be entertained under section 181 as there are other suitable remedies in law which the petitioner has in fact initiated. In *Eng Man Hin & Anor v King's Confectionery Sdn Bhd*, the court stated:

> The petitioners also complained that they were denied access to the company's records by the second fifth respondents. The second fifth respondents have produced evidence to show that there are financial discrepancies within the company. The second respondent had written a letter dated 16 September 2005 to the first petitioner for an explanation. The first petitioner has refused to provide an answer and instead have made various accusations. The vouchers showing the payments taken by the first petitioner had been produced and the correspondence relating to the financial irregularities are also produced. Clearly, the first respondent company is entitled to obtain clarification from the first petitioner, under such circumstances. The second fifth respondents as directors are justified to take action upon the first petitioner's refusal to do so. By reason of the facts stated above, the second fifth respondents are entitled to control the access by the first petitioner to the company's information and records.
>
> In any event, with the consent order for the inspection of documents as requested by the petitioners under s 167 of the Companies Act 1965, there should be no further cause for complaint by the petitioners on this same matter…

[29] The allegations involving Pelita Towerview Sdn Bhd has no relevance to this petition. Further, the allegation of secret profits between the first respondent and the eighth respondent cannot be entertained in this petition. Section 181 deals with a member's personal right to be treated fairly. The injury must be an injury done to himself and not the ninth respondent. If the injury is to the ninth respondent, the proper complainant is the ninth respondent itself and it cannot be the petitioner, [see *Prudential Assurance Co Ltd v Newman Industries Ltd (No 2)* [1982] 1 All ER 354]. The court will not ordinarily interfere with the internal management of the company which are being managed honestly and in accordance with law, [see *Re Bright Pine Mitts Pty Ltd* [1969] VR 1002]. If the acts in question affect the complainant in some capacity other than as member, he has no right to maintain an action and seek remedy under s 181 of CA 1965, [see *Re HR Harmer Ltd* [1958] 3 All ER 689].

[30] The petitioner will have no cause of action and remedy if he cannot demonstrate the 'affairs of the company' are being conducted in a manner oppressive to themselves as minority shareholders. In *Scottish Co-Operative Wholesale Society Ltd v Meyer* [1958] 3 All ER 66, Lord Morton stated:

> ... but, as I have already pointed out, the respondent can only bring themselves within s 210 of the Act of 1948 if they prove that the affairs of the company whereof they are members are being conducted in a manner oppressive to themselves as minority shareholders. They cannot succeed, in my opinion, merely by proving that the affairs of another company are being so conducted, even if that other company holds the majority of shares in the company whereof the respondents are members and nominees of the majority of its

directors. It may be unfortunate that this form of oppression is not covered by the section; but this is, to my mind, the inevitable result of the words 'the affairs of the company are being conducted.

[31] It is my finding that the petitioner has not shown that the alleged wrong doers have acted in such a way that they have breached the provisions of s 181 of CA 1965 in that they have been conducting or are exercising: (a) the affairs of the ninth respondent; or (b) the powers of the directors; either (i) in a manner oppressive to one of the members including the petitioner; or (ii) in disregard of the petitioner's interest or other members' interests.

[32] The legal test what amounts to oppression has been succinctly stated in *Re Kong Thai* as whether there has been conduct which is visible departure from standards of fair dealing ie, whether, the conduct complained of was burdensome, harsh and wrongful. Section 181(a) also contains the words 'disregard': (i) an awareness of the interest and (ii) a deliberate decision to ignore it. On the facts of the case, it is my finding that a case for oppression has not been made out. The petitioner in this case is highly respected by the first respondent and other shareholders. This is evidence by the fact that they have not removed him as a director.

[33] En passant, I will say that the petitioner must have undoubtedly contributed much for the success of the ninth respondent. In consequence, though he is a minority shareholder, the majority members out of respect and tribute to his contribution have not removed him as a director or refused his participation, in the management of the company. The first respondent on his part has not made any allegation against the petitioner in all his affidavits to make it impossible for them to reconcile with their difference and continue to bring great economic success to the ninth respondent and thereby boost the income and achievement of all those who are dependent on the success of the ninth respondent, inclusive of the public who will benefit from the taxes collected from the ninth respondent. I think it is essential and necessary for all true well wishers of the petitioner and the first respondent to make efforts to reconcile the two rather than continue to litigate the issues.

[34] For reasons stated above, I can only make two orders that is to dismiss the petition with costs to the respondents. Many documents have been involved in this case and much time would have been spent by the respective solicitors. For that reason, I take the view that the getting up fees for each group of solicitors should not exceed RM100,000. If costs cannot be agreed the respondents are at liberty to tax their costs. I hereby order so.

Petition dismissed with costs

Reported by Sally Kee